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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 648

[Docket No. 140403312-4632-02]

RIN 0648-BE17

Fisheries of the Northeastern United States; Spiny Dogfish Fishery; Final 2014-2015 Spiny Dogfish Specifications

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Final rule.

SUMMARY: This rule implements catch limits, commercial quotas, and possession limits for the spiny dogfish fishery for the 2014-2015 fishing years. The action was developed by the Mid-Atlantic and New England Fishery Management Councils pursuant to the fishery specification requirements of the Spiny Dogfish Fishery Management Plan. These management measures, including the increase in catch limits above the 2013 levels, are supported by the best available scientific information and reflect recent increases in spiny dogfish biomass, and are expected to result in positive economic impacts for the spiny dogfish fishery while maintaining the conservation objectives of the Spiny Dogfish Fishery Management Plan.

DATES: This rule is effective [insert date 30 days after date of publication in the FEDERAL REGISTER].

ADDRESSES: Copies of the specifications, including the Environmental Assessment and Initial Regulatory Flexibility Analysis (EA/IRFA) and other supporting documents for the action are

available from Dr. Christopher M. Moore, Executive Director, Mid-Atlantic Fishery Management Council, Suite 201, 800 N. State Street, Dover, DE 19901. The amendment is also accessible via the Internet at: <http://www.nero.noaa.gov>.

NMFS prepared a Final Regulatory Flexibility Analysis (FRFA), which is contained in the Classification section of this rule. Copies of the FRFA and the Small Entity Compliance Guide are available from the Regional Administrator, Greater Atlantic Regional Fisheries Office, NMFS, 55 Great Republic Drive, Gloucester, MA 01930, and are available via the Internet at: <http://www.nero.noaa.gov>.

FOR FURTHER INFORMATION CONTACT: Tobey Curtis, Fishery Policy Analyst, (978) 281-9273.

#### SUPPLEMENTARY INFORMATION:

##### Background

The Atlantic spiny dogfish (*Squalus acanthias*) fishery is jointly managed by the New England and Mid-Atlantic Fishery Management Councils. The Atlantic States Marine Fisheries Commission also manages the spiny dogfish fishery in state waters from Maine to North Carolina through an interstate fishery management plan (FMP). The Federal Spiny Dogfish FMP was implemented in 2000, when spiny dogfish were determined to be overfished. The spiny dogfish stock was declared to be successfully rebuilt in 2010, and it continues to be above its target biomass.

This final rule implements specifications (i.e., annual catch limit (ACL), commercial quota, and possession limits) for the spiny dogfish fishery for the 2014 and 2015 fishing years, in accordance with the requirements of the Spiny Dogfish FMP. Proposed specifications published in the Federal Register on May 13, 2014 (79 FR 27274), with public comments accepted through

June 12, 2014. Details concerning the development of these specifications and the proposed measures were contained in the preamble of the proposed rule and are not repeated here.

#### Final 2014-2015 Specifications

Due to recent observed increases in spiny dogfish stock biomass, and based upon the recommendations of the Councils, the spiny dogfish ACLs and commercial quotas are being increased from 2013 levels (refer to the EA for more details; see ADDRESSES). Additionally, after consideration of public comments received on the proposed rule (refer to the Comments and Responses section below), the spiny dogfish trip limit is also being increased. NMFS is implementing the following specifications for the spiny dogfish fishery for the 2014-2015 fishing years:

1. ACL of 60.695 million lb (27,531 mt) and pre-Research Set-Aside (RSA) commercial quota of 49.037 million lb (22,243 mt) for 2014 (+20 percent from 2013);
2. ACL of 62.270 million lb (28,245 mt) and pre-RSA commercial quota of 50.612 million lb (22,957 mt) for 2015 (+24 percent from 2013); and
3. A Federal spiny dogfish trip limit of 5,000 lb (2,268 kg).

The two Councils could not agree on the spiny dogfish trip limit for 2014-2015. The Mid-Atlantic Fishery Management Council recommended the status quo trip limit (4,000 lb (1,814 kg)), and the New England Fishery Management Council recommended no limits on the possession of spiny dogfish (due in part to significant under-harvest of the spiny dogfish quotas in recent years). Under the FMP, when the two Councils recommend different specification measures, NMFS has the discretion to implement any measure not specifically rejected by both Councils. In this case, NMFS may implement whatever trip limit is deemed the most appropriate based upon the advice of the Councils and public comments. In acknowledgement of the

concerns of both Councils, as well as the input of the public, NMFS is implementing a modest increase in the spiny dogfish trip limit. The increase to 5,000 lb (2,268 kg) is expected to increase opportunities to land the abundant spiny dogfish resource without resulting in additional market instability or other potential economic impacts.

NMFS has approved and implemented Amendment 3 to the Spiny Dogfish FMP (July 15, 2014; 79 FR 41141), which becomes effective on August 14, 2014. Amendment 3 implemented an RSA program for the Spiny Dogfish FMP, in which up to 3 percent of the commercial quota may be set aside to support scientific research. Under the specifications implemented in this rule, the maximum available RSA amounts are 1.470 million lb (667 mt) for 2014, and 1.519 million lb (689 mt) for 2015. A total of 250,000 lb (113 mt) of spiny dogfish RSA has been awarded for 2014, leaving 48.787 million lb (22,129 mt) for the final 2014 commercial quota. Assuming the maximum available amount of RSA is awarded in 2015, the final commercial quota would be 49.093 million lb (22,268 mt). However, any unused portion of the 2015 spiny dogfish RSA will be reallocated to the 2015 commercial quota. Additionally, Amendment 3 removed the seasonal allocation of the spiny dogfish commercial quota. Therefore, these final specifications will apply to the spiny dogfish fishery on an annual, coastwide basis. However, the regional and state-by-state allocation of the spiny dogfish quota by the Commission may still affect Federal spiny dogfish vessels.

#### Comments and Responses

A total of 29 comments were received on the proposed rule from 22 individuals (predominantly fishermen from Massachusetts), 3 fishing industry organizations, 3 state agencies (Maine Department of Marine Resources, Massachusetts Division of Marine Fisheries, and the Rhode Island Department of Environmental Management), and the Mid-Atlantic Fishery

Management Council. All but one comment focused on the spiny dogfish trip limit and rationale for the preferred limit. Some supported the proposed rule, including the proposed unlimited possession measure. Others opposed unlimited possession of spiny dogfish, and stated preferences for the status quo (4,000-lb (1,182-kg) trip limit). Four commenters favored a slight increase in the spiny dogfish trip limit (e.g., 5,000 lb (2,268 kg)), but also opposed unlimited possession. Finally, one commenter expressed general opposition to the proposed specifications, but did not identify a preferred quota or trip limit. This section summarizes the principle comments contained in the individual comment letters that pertained to the proposed rule and NMFS' response to those comments.

Comment 1: Some commenters expressed support for the proposed specifications, including unlimited possession of spiny dogfish. They argued that spiny dogfish are over-abundant, and since the fishery has been under-harvesting its quotas in recent years (e.g., only 39 percent of the quota was landed in 2013), possession limits are not necessary. They also argued that unlimited possession in Federal waters would provide the states with more flexibility to tailor spiny dogfish management measures to the needs of their particular states.

Response: While NMFS acknowledges the high abundance of spiny dogfish and recent under-harvesting of the quota, unlimited possession may be imprudent at this time due to market and processing constraints. Demand for spiny dogfish in the primary export markets has been significantly reduced over the last two years. Large volume landings of spiny dogfish could result in market gluts and reduced prices, and disadvantage smaller day-boat fishing operations. The final trip limit of 5,000 lb (2,268 kg) is expected to help the fishery harvest more of the abundant spiny dogfish resource should markets recover during 2014 and 2015, while still constraining the rate of landings across the year and allowing broad participation across fisheries.

States may still work through the Commission process to specify appropriate management measures for their own state waters.

Comment 2: Other commenters opposed the proposed unlimited possession of spiny dogfish, and commented in favor of maintaining the status quo (4,000-lb (1,812 kg)) trip limit. These commenters opposed increasing the spiny dogfish trip limit for a variety of reasons, including concerns that higher trip limits would drive the price down, increase market instability, disadvantage smaller fishing vessels, increase bycatch, reduce product quality, and increase the risk of overfishing. They also felt that any increases would be premature until the spiny dogfish markets recover or expand.

Response: NMFS agrees that unlimited possession of spiny dogfish could result in some of the negative impacts listed. However, it is unlikely that the modest trip limit increase to 5,000 lb (2,268 kg) would result in impacts significantly different from the status quo. The small increase would also potentially help more of the available spiny dogfish quotas to be landed, increase total revenues, and help maintain a consistent supply of spiny dogfish products should markets recover or expand. Maintaining the 4,000-lb (1,812-kg) trip limit under the significantly increased final commercial quotas would likely result in continued under-harvests.

Comment 3: Some commenters opposed the proposed unlimited possession of spiny dogfish, but favored minor increases to the spiny dogfish trip limit (e.g., 5,000 lb (2,268 kg)). They stated that incremental increases may benefit the fishery (e.g., slightly increased revenues), allow more of the available quotas to be landed, maintain market stability, and help reduce the population of spiny dogfish, which is perceived as a pest causing unwanted predation pressure on more valuable fish stocks. Spiny dogfish processors in Massachusetts also indicated that their processing capacity could absorb an increase to a 5,000-lb (2,268-kg) trip limit.

Response: NMFS agrees that a modest increase in the spiny dogfish trip limit to 5,000 lb (2,268 kg) is justified for the 2014 and 2015 fishing years. This trip limit is not expected to result in the potential negative impacts associated with unlimited possession, while still providing some additional economic opportunity for the spiny dogfish fishery. The final trip limit has a higher likelihood of helping the spiny dogfish fishery achieve its optimum yield than status quo or unlimited possession.

Comment 4: A commenter opposed the proposed increases in spiny dogfish catch limits and commercial quotas, and suggested that they should be reduced by 50 percent.

Response: NMFS disagrees that reductions to the spiny dogfish catch limits are warranted. Spiny dogfish are not currently overfished or experiencing overfishing. Spawning stock biomass of spiny dogfish is currently estimated to be 33 percent above the target biomass level deemed sustainable for the stock. The increased catch limits and commercial quotas specified in this rule are based upon the best available scientific information, and meet the objectives of the Spiny Dogfish FMP and the requirements of the Magnuson-Stevens Fishery Conservation and Management Act.

#### Changes from Proposed Rule to Final Rule

As described above, NMFS proposed unlimited possession of spiny dogfish in the proposed rule, as recommended by the New England Fishery Management Council. Based upon public comments, this final rule changes the spiny dogfish possession limit to 5,000 lb (2,268 kg) per trip.

#### Classification

Pursuant to section 304(b)(1)(A) of the Magnuson-Stevens Act, the NMFS Assistant Administrator determined that this rule is consistent with the Spiny Dogfish FMP, other provisions of the Magnuson-Stevens Act, and other applicable law.

This action has been determined to be not significant for purposes of Executive Order (E.O.) 12866.

Pursuant to section 604 of the Regulatory Flexibility Act (RFA), NMFS has prepared a Final Regulatory Flexibility Analysis (FRFA) in support of this action. The FRFA incorporates the Initial Regulatory Flexibility Analysis (IRFA), a summary of the significant issues raised by the public comments in response to the IRFA, NMFS' response to those comments, relevant analyses contained in the action and its EA, and a summary of the analyses completed to support the action in this rule. A copy of the analyses and the EA are available from the Council (see ADDRESSES). A summary of the IRFA was published in the proposed rule for this action and is not repeated here. A description of why this action was considered, the objectives of, and the legal basis for this rule is contained in the preamble to the proposed rule and this final rule and is not repeated here.

A Summary of the Significant Issues Raised by the Public in Response to the IRFA, a Summary of the Agency's Assessment of Such Issues, and Statement of Any Changes Made in the Proposed Rule as a Result of Such Comments

A total of 29 comments were received on the proposed rule. For a summary of the comments, and NMFS' responses, see the Comments and Responses section above. The comments did not raise any issues or concerns related to the IRFA specifically. However, a number of commenters argued that the proposed unlimited possession of spiny dogfish could result in minor negative economic impacts. Based upon public comments, NMFS changed the



possession limit from the proposed rule, and is increasing the trip limit only slightly (from 4,000 lb (1,812 kg) to 5,000 lb (2,268 kg)) in this final rule.

#### Description and Estimate of Number of Small Entities to Which the Rule Would Apply

This rule would impact fishing vessels that land spiny dogfish. In 2012, 2,666 commercial fishing vessels held spiny dogfish permits. However, not all of those vessels are active participants in the fishery; only 489 vessels landed spiny dogfish in 2012. Additionally, if two or more vessels have identical owners, these vessels are considered to be part of the same firm. When permit ownership data are considered, in 2012, 1,976 fishing firms held at least one spiny dogfish permit. According to the Small Business Administration (SBA), firms are classified as finfish or shellfish firms based on the activity from which they derive the most revenue. Using the \$5.5M cutoff for shellfish firms (NAICS 114112) and the \$20.5M cutoff for finfish firms (NAICS 114111), there are 1,953 directly regulated small entities and 23 directly regulated large entities. There are 488 active fishing firms, of which 482 are small entities and 6 are large entities. On average, for small entities, spiny dogfish is responsible for a small fraction of landings, and active participants derive a small share of gross receipts from the spiny dogfish fishery. While all 1,953 directly regulated small entities would be affected by these specifications, many of these small entities do not currently participate in this fishery and would be likely to experience only negligible economic impacts, if any.

#### Description of Projected Reporting, Recordkeeping, and Other Compliance Requirements

This action does not introduce any new reporting, recordkeeping, or other compliance requirements. This rule does not duplicate, overlap, or conflict with other Federal rules.

#### Description of the Steps the Agency Has Taken to Minimize the Significant Economic Impact on Small Entities Consistent With the Stated Objectives of Applicable Statutes

Three spiny dogfish management alternatives were analyzed for each year, 2014 and 2015. As described in the EA for this action (see ADDRESSES), Alternative 1 represents the Mid-Atlantic Council's recommended revised quotas and trip limits, Alternative 2 represents the New England Council's recommended revised quotas and trip limits, and Alternative 3 represents the no action quotas and trip limits for 2014 and 2015. While both Councils recommended the same revised ACLs and commercial quotas in Alternatives 1 and 2, as described above, the Mid-Atlantic Council recommended a 4,000-lb (1,814-kg) trip limit and the New England Council recommended an unlimited trip limit. The no action alternative (Alternative 3) includes lower ACLs and commercial quotas than the other two alternatives, and maintains a 4,000-lb (1,814-kg) trip limit, reflecting the final 2013-2015 spiny dogfish specifications implemented by NMFS on May 1, 2013 (78 FR 25862).

According to the analysis in the EA (see ADDRESSES), all of the alternatives under consideration in this action are expected to result in positive economic impacts. Alternatives 1 and 2 would increase the maximum potential landings for the spiny dogfish fishery during 2014 and 2015, as compared to Alternative 3. However, the commercial quotas in all three alternatives are higher than realized spiny dogfish landings during recent fishing years. In the 2013 fishing year, which ended on April 30, 2014, the spiny dogfish fishery landed only about 39 percent of its 40.842-million lb (18,526-mt) quota (refer to landings data at [www.nero.noaa.gov](http://www.nero.noaa.gov)), largely due to market issues and declines in demand in the primary export markets. Total spiny dogfish revenue from the 2012 fishing year was reported as \$5.3 million, reflecting an average price of \$0.20 per lb. The commercial quotas in Alternatives 1 and 2, if fully utilized, would correspond to approximately \$9.9 million in potential revenue, whereas, the

lower commercial quota in Alternative 3 would correspond to approximately \$7.9 million in potential revenue.

Trip limits influence the rate of landings across the fishing year, and are not expected to result in direct positive or negative economic impacts on the fishery as a whole. While different trip limit alternatives may affect trip-level revenues, and have variable, short-term effects on price, total spiny dogfish revenues will still be largely influenced by the quota. The final trip limit implemented by this rule (5,000 lb (2,268 kg)) is a change from the proposed rule (unlimited possession) and acknowledges some of the potential minor economic impacts of unlimited possession, as described in the public comments (see Comments and Responses). Additionally, the Commission and individual states may implement various spiny dogfish trip limits in their state waters (current trip limits range from 4,000 lb (1,814 kg) to 10,000 lb (4,536 kg) per trip), which would effectively limit the allowable possession of spiny dogfish by Federal permit holders.

List of Subjects in 50 CFR Part 648

Fisheries, Fishing, Reporting and recordkeeping requirements.

Dated: August 4, 2014.

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Eileen Sobeck,

Assistant Administrator for Fisheries,

National Marine Fisheries Service.

For the reasons set out in the preamble, 50 CFR part 648 is amended as follows:

PART 648--FISHERIES OF THE NORTHEASTERN UNITED STATES

1. The authority citation for part 648 continues to read as follows:

Authority: 16 U.S.C. 1801 et seq.

2. In § 648.235, revise paragraph (a) (1) to read as follows:

§ 648.235 Spiny dogfish possession and landing restrictions.

(a) \* \* \*

(1) Possess up to 5,000 lb (2,268 kg) of spiny dogfish per trip; and

\* \* \* \* \*

[FR Doc. 2014-18817 Filed 08/05/2014 at 4:15 pm; Publication Date: 08/08/2014]